

STB DOCKET NO. AB-167 (SUB-NO. 766N)<sup>1</sup>

CONRAIL ABANDONMENT OF THE WEEHAWKEN BRANCH  
IN HUDSON COUNTY, NJ

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*Decided March 12, 2001*

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The Board holds that Conrail may invoke section 308 of the Regional Rail Reorganization Act to abandon a line even though the railroad has sold the physical assets and retains only an easement interest.

BY THE BOARD:

Consolidated Rail Corporation (Conrail) filed two applications on November 14, 2000, under section 308 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. 748,<sup>2</sup> to abandon approximately 3.84-miles of the Weehawken Branch,<sup>3</sup> 6.95-miles of the River Line,<sup>4</sup> and associated trackage in Hudson County, NJ. Subsequently, on February 12, 2001, the date the abandonments were to become effective, Cognis Corporation (Cognis), one of

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<sup>1</sup> This decision embraces STB Docket No. AB-167 (Sub-No. 1067N), *Conrail Abandonment of the River Line — in Hudson County, NJ*. These proceedings are not consolidated. They are being considered together because the two lines at issue are operated as a single line.

<sup>2</sup> Section 308 was added by the Northeast Rail Service Act of 1981 (NERSA), enacted as Subtitle E of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35. NERSA established separate, expedited procedures for abandonments filed by Conrail.

<sup>3</sup> The 3.84-mile segment of the Weehawken Branch extends from the “point of switch in Jersey City[, NJ]” (approximately MP 0.00) “to the southerly R.O.W. line of Baldwin Avenue in Weehawken[, NJ]” (approximately MP 2.84), and includes “the former DL&W Railroad Lead to the Hoboken Freight Yard in Jersey City.” Conrail Application in STB Docket No. AB-167 (Sub-No. 1067N) at 2.

<sup>4</sup> The 6.95-mile segment is composed of part of Conrail’s River Line: (1) from the connection to the Passaic and Harismus Branch at Controller Point (CP) “Waldo” in Jersey City (approximately MP 0.00) to the south side of Clifton Road in Weehawken (approximately MP 4.7), including the River Yard; and (2) from the south side of Clifton Road in Weehawken (approximately MP 0.00) to the northwest side of Tonnelle Avenue (excluding the portion of line, associated track, and underlying right-of-way necessary to retain access and continue service to Durkee Foods) in North Bergen, NJ (approximately MP 1.53); plus the National Docks Secondary in Jersey City from where it connects with the River Line at CP “Nave,” to the east side of Newark Avenue (approximately 1,350 feet); and the Weehawken Branch (Chicken Yard) in Weehawken, from where it connects with the River Line on the east side of Willow Avenue to the end of the track (approximately 2,450 feet).

the lines' two active shippers, filed a timely offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27 to subsidize and purchase the two lines (referred to as the River Line).

In a decision served on February 16, 2001, Cognis was found financially responsible and its offer was found sufficiently reasonable to begin negotiations.<sup>5</sup> The issuance of decisions authorizing abandonments was postponed and the deadline for the parties to request that the Board establish terms and conditions for the subsidy and purchase of the River Line, in the event the parties cannot reach an agreement, was established as March 14, 2001.

On March 2, 2001, Cognis filed a request to extend the time period to negotiate a subsidy and purchase price until 30 days after the later of the March 14, 2001, deadline or the service date of decisions ruling on the merits of Cognis' motions to dismiss Conrail's abandonment applications and Cognis' petitions for a reduction of the filing fee for setting terms and conditions.<sup>6</sup> Cognis states that the requested extension would facilitate the parties' efforts to reach an agreement. Additionally, Cognis states that there would be no need to go forward with the OFA process if its motions to dismiss the Conrail abandonment applications were granted.

In reply, Conrail concedes that we have the authority to grant an exemption, pursuant to 49 U.S.C. 10502, from the 30-day limit on the OFA negotiating period. Conrail, however, argues that no basis for an exemption exists, citing a need for expedition. But Conrail admits that it has not met with Cognis to negotiate terms and conditions.

#### DISCUSSION AND CONCLUSIONS

We will treat Cognis' request as one for an exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10904(e) and for relief from related regulatory requirements at 49 CFR 1152.27(g). Under section 10502, we must exempt a transaction or service from a provision of law when we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

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<sup>5</sup> Cognis offered \$7,960 to subsidize the continued operation of the River Line for 1 year and the nominal sum of \$1 to purchase Conrail's interest at any time prior to the expiration of the subsidy period, with the purchase decision left to Cognis' sole discretion.

<sup>6</sup> On March 2, 2001, the Secretary of the Board granted in part Cognis' request for a reduction in the fee for filing requests to set terms and conditions.

The exemption will enable the parties in this unusual situation to begin negotiations. The exemption also will permit Cognis to receive a ruling on its motion to dismiss the abandonment applications before the expiration of the negotiating period. That decision would either eliminate the need to pursue the section 10904 process or permit it to go forward with the issues raised by the motion resolved.

As such, exemption here will further the rail transportation policy by minimizing the need for Federal regulatory control over the rail transportation system, promoting a safe and efficient rail transportation system, and fostering sound economic conditions in transportation. 49 U.S.C. 10101(2)(3), and (5). Other aspects of the rail transportation policy will not be adversely affected.

Regulation is not needed to protect shippers from the abuse of market power in this instance. Permitting additional time for negotiations here will benefit shippers. Because there is no need to protect shippers from the abuse of market power, there is no need to make a limited scope finding.

The due date for petitions to set terms and conditions for the subsidy and purchase of the River Line will be extended for 30 days, from March 14, 2001, to April 13, 2001.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

*It is ordered:*

1. Petitions to set terms and conditions for the subsidy and purchase of the River Line will be due on April 13, 2001.
2. This decision is effective on March 13, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.